

Dear Sarah:

I have attached the Tribe's objective and proposed agenda for our upcoming meeting on July 24, 2012. If you could insert the names and titles of all attendees from EPA, as well as the specific location of the meeting, that would be great. Please also confirm that you will have A/V equipment on hand to enable us to deliver our presentation. This is an important and expensive trip for us out to D.C., so we're really hoping to make our two hours together count. To help achieve this end, we are preparing and will provide you with a copy of our presentation at least one week in advance of our meeting. We think it would help facilitate a more efficient meeting if the panelists could review that presentation, along with the Tribe's March 13, 2012 letter and November 30, 2011 presentation to EPA, prior to the meeting. Such review will help minimize the amount of time we need to spend on background issues and allow us to focus on the questions presented to the panel.

I also think our meeting will be more productive if we can agree to three basic assumptions beforehand. These include:

1. In the context of a TMDL for a multi-jurisdictional waterway, EPA requires an upstream sovereign to meet the water quality standards of a downstream sovereign.
2. EPA will reject an upstream sovereign's determination of compliance with the downstream sovereign's water quality standards where the methodology underlying that determination contravenes downstream standards.
3. For purposes of questions 1 and 2, EPA treats states and tribes with treatment-as-a-state status identically.

Finally, I want to make it clear that the Tribe is primarily interested in discussing the Pend Oreille River Temperature TMDL for consistency with national TMDL policy and state and tribal water quality standards on the basis of the record before EPA. If it becomes necessary to debate the technical merits of cumulative frequency analysis, we would need to schedule a follow-up meeting. We hope that the panel is selected with this understanding in mind. Additionally, we would appreciate a response to the questions and assumptions posed in this letter.

I look forward to hearing from you soon.

Regards,

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Draft response to Deane:

Dear Deane,

Attached please find the Kalispel Tribe draft agenda with specific location information for July 24, participants on our informal HQ technical review team, other HQ participants, and participants (via phone) from EPA Region 10.

We will plan to have a laptop, projector and screen, and Internet connection (not wireless) for delivery of the Kalispel Tribe's presentation. When I receive the presentation about July 17, I will load this onto the laptop and have it ready for presenting during your visit.

Based on earlier communication with us and Region 10, It is our original understanding that this visit is the Kalispel Tribe's opportunity to present technical and legal issues with the Pend Oreille temperature TMDL to the informal HQ review team. As I mentioned earlier, EPA plans to listen to Kalispel Tribe's presentation in order to understand the issues as best as possible (possibly asking clarifying questions). We expect that, shortly after our meeting on the 24th, we will follow up with the Region regarding our collective thoughts as the Region makes its final decision. We see our role as providing input to the Region, as EPA HQ and Region 10 work together in close coordination.

In your email, you raised a number of policy issues, which are important but complicated issues/questions, and which have broader implications beyond the Pend Oreille TMDL. Based on our understanding of the request for an independent technical review from HQ, the team we've put together consists primarily of several EPA people with technical expertise based on our understanding of the purpose of the meeting, and thus would not be in the best position to address these questions. In addition, it will be difficult to resolve these larger policy questions in the time before our meeting. However, In the visit, we certainly welcome your thoughts on the following points to provide us a better understanding of how these points apply, in particular, to the Pend Oreille situation:

1. What does Kalispel Tribe believe it means to say EPA requires an upstream sovereign to meet the water quality standards of a downstream sovereign in this particular TMDL?
2. What does Kalispel Tribe believe it means to say EPA will reject an upstream sovereign's determination of compliance with the downstream sovereign's water quality standards where the methodology underlying that determination contravenes downstream standards in this particular TMDL?

3. For purposes of questions 1 and 2 and in the context of the Pend Oreille temperature TMDL, what is the Kalispel Tribe's expectation for treatment in the same manner as a state?

We look forward to Kalispel Tribe's visit, and please let me know if you have any further questions about scheduling this meeting.